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# STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

ST. PAUL 55155

November 15, 1984

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ADDRESS REPLY TO  
ATTORNEY GENERAL'S OFFICE  
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Becky Comstock  
Dorsey & Whitney  
2200 First Bank Place East  
Minneapolis, MN 55402

Re: U.S. v. Reilly Tar & Chemical Corporation  
File No. Civ. 4-80-469

Dear Ms. Comstock:

Thank you for the copy of your letter of November 9, 1984, to EPA Assistant Regional Counsel Robert Leininger concerning Reilly's response to the EPA Administrative Order of August, 1984. In the letter, you state that Reilly's offer to build and operate the drinking water treatment system required by the Administrative Order continues to be subject to the four conditions set forth in Edward J. Schwartzbauer's letter to Mr. Leininger of September 14, 1984. Since the latter three of those four conditions would require certain commitments by the State of Minnesota, I wish to advise Reilly of the State's position on those conditions.

Condition 1: This condition concerns agreements between Reilly and the City of St. Louis Park and between Reilly and the Calgon Carbon Corporation. The State is not involved.

Condition 2: Reilly requests a partial consent decree executed by the United States, the State, and the City reciting that all three governmental entities are directing Reilly to construct and operate the treatment plant and that performance of this task "satisfies any requested relief in the litigation relating to drinking water treatment."

The State is agreeable to the concept of a partial consent decree which would obligate Reilly to construct and operate a treatment plant meeting the performance criteria referenced in Condition 4 below and which would bar the State from pursuing any other judicial or administrative claim for implementation of a drinking water treatment system at St. Louis Park municipal wells 10 and 15. As Reilly has known for over a year, the State's remedial planning includes contingencies for drinking water treatment at other municipal wells in St. Louis Park and neighboring communities. The State will not relinquish its right to require contingent actions at other wells because of Reilly's performance of

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this task at St. Louis Park wells 10 and 15. Nor will the State relinquish its right to seek natural resource damages for ground water contaminated by Reilly, including the ground water in the vicinity of wells 10 and 15.

Condition 3: Reilly seeks to preserve its "right to reimbursement from the United States and the State of Minnesota for the cost [of the work] in the event that the Court finds the plant to be unnecessary."

The State disagrees that there is any right to reimbursement from the State should Reilly undertake the task directed in the EPA Administrative Order. The State will not recognize any such right in a partial consent decree. However, the State will not require that Reilly waive such rights as may exist in order to enter into a partial consent decree.

Condition 4: Reilly requests that the parties give further consideration to the specific performance criteria to be utilized.

The State, in conjunction with the EPA, has carefully reviewed the Administrative Order and Reilly's comments thereon. As Reilly knows from the proposed MPCA Request for Response Action (RFRA) mailed on November 2, 1984, and the settlement discussions on November 8, 1984, the State is not insisting on a specific design for the treatment plant and will accept a Reilly design which will attain the drinking water criteria specified in the RFRA for total carcinogenic PAH, for benzo(a)pyrene and dibenz(ah)anthracene, and for total other PAH.

I hope these comments will clarify the State's general position on the Reilly response to the Administrative Order.

Very truly yours,



STEPHEN SHAKMAN  
Special Assistant  
Attorney General

SS:mah

cc: Robert Polack  
Robert Leininger  
Paul Bitter  
Deborah Woitte  
Chris Grundler  
David Hird  
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